IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.7.2007

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition Nos.16588 of 1998 & 15321 of 2001

A.Palpandian .. Petitioner in both W.Ps.

Vs.

The Chairman-cum-Managing Director
HTL Limited
Guindy, Chennai - 32. R1 in WP 16588/98 & Respondent in WP 15321/01.

M.Raghuchander .. R2 in WP 16588 of 1998
The Inquiring Authority

Petitions under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus and Mandamus respectively, Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records of the first respondent in her proceedings Memo.No.8C/1761/RDA dated 10.11.97 appointing the Second respondent as Inquiring Authority and all further proceedings taken by the respondent and quash the said proceedings dated 10.11.97 of the first respondent and consequently direct the first respondent to reinstate the petitioner with all attendent service benefits like seniority backwages, promotion et., (WP.16588 of 1998)

Writ of Mandamus, directing the respondent to revise the subsistence allowance in respect of the petitioner with effect from 01.01.1997 as per Revised pay scales issued as per circular Ref. ADMN/WR-97/Exe. dated 12.07.2000 and disburse the subsistence allowance with all back wages and pass such further or other orders for the reliefs as stated therein.

For Petitioner : Mr.M.Venkatachalapathy, S.C.
For Mr.M.Sriram

For Respondents : Mr.Sanjay Mohan for
M/S. Ramasubramaniam Associates in WP.16588/98
T.R.Sethuraman for
Mr.S.Srinivasan for Respondent in WP.15321/2001

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O R D E R

The petitioner has filed W.P.No.16588 of 1998 challenging the proceedings of the first respondent dated 10.11.1997, under which, the first respondent has appointed one M.Raghuchander, Ex-Chairman, Goa State Administrative Tribunal, as the Inquiry Officer to inquire into the charges framed against him and one V.Panchapakesan, Special Public Prosecutor, Government of Tamil Nadu as the Presenting Officer.

2. W.P.No.15321 of 2001 has been filed by the petitioner for a direction to the respondent, viz. Chairman cum Managing Director, HTL Limited, to revise the subsistence allowance in respect of the petitioner with effect from 1.1.1997.

3.1. The petitioner, who belong to socially and economically down trodden community, viz. Scheduled Tribe, was originally appointed as Electrical Engineer in the respondent Company and later risen to the level of Manager. A disciplinary proceedings was initiated against him, inquiry officer was appointed and after inquiry, a second show cause notice was issued. Aggrieved by the same, the petitioner has filed W.P.No.16588 of 1998.

3.2. Pending the writ petition, it is admitted, as stated by the learned senior counsel for the petitioner, that the petitioner was allowed to retire on attaining super annuation by the respondent Company on 30.5.2002 and the payment of gratuity has not been made so far. It is the grievance of the petitioner that during the period of suspension, he has not been paid the revised amount of subsistence allowance, based on the pay revision and therefore, he filed W.P.No.15321 of 2001.

3.3. The petitioner was suspended on 31.7.1995. Even though he was subsequently reinstated, there was a second suspension order on 7.5.1997 and he was paid the subsistence allowance as per the Rules governing the respondent Company.

3.4. The respondent Company has filed the counter affidavit. It is stated that while it is true that the petitioner was placed under suspension and he was paid subsistence allowance at the rate of 50% of his basic pay and D.A. and after a period of six months, the same was increased to 75%. Consequent to the wage revision on 1.1.1992, he was also paid the arrears of Rs.34,840/- on 27.2.1996 and the D.A. was revised every quarter. There was a subsequent wage revision which was given effect to from 1.1.1997, and since the petitioner had been suspended since 1995, wage revision, which has come into effect from 1.1.1997, was not applicable to him.

4.1. Mr.Sanjay Mohan, learned counsel appearing for the respondents would submit that due to the change in circumstances, the writ petitions are not maintainable, as the respondent Company, which was originally a

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Government of India undertaking at the time of filing of the writ petition, has been subsequently privatised and therefore, the respondent Company is ceased to be an authority within the meaning of Article 12 of the Constitution of India and accordingly, the writ petition for enforcing the right of employment was not maintainable.

4.2. To substantiate his contention, the learned counsel for the respondents relies upon the judgment of this Court in P.Subban v. H.T.L. Ltd. [2003 (3) LLN 1078], wherein this Court, while dealing with the present respondent Company, based on the change of circumstances, viz. privatisation of the said company, has held that the writ petition is not maintainable as follows:

> "Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No.14425 of 1995, dated 19 July 2002 (the entire order in this case is given in Para. 8 supra) and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum."

4.3. The learned counsel for the respondents would also rely upon a subsequent judgment of a Division bench dated 14.3.2007 in W.A.No.416 of 1998 (Hindustan Teleprinters Employees Union v. Union of India & 3 others), wherein, relying upon the decision of the judgment of this Court in P.Subban v. H.T.L. Ltd. cited supra, dismissed the appeal in the following words:

> "When the matter is taken up, the learned counsel for the appellant, brought to the notice of this Court, the judgment reported in 2003 (3) LLN 1078 (P.Subban v. H.T.L. Ltd.), wherein it has been held that writ petition against a Government Company after privatisation is not maintainable. The relevant paragraph in the said judgment is as hereunder:
>
> > "Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No.14425 of 1995, dated 19 July 2002 (the entire order in this case is given in Para. 8 supra) and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum."

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3. Following the above judgment, the present writ appeal against the order of dismissal of the writ petition filed challenging the notification issued by the 4th respondent is liable to be dismissed and it is accordingly dismissed. It is open to the appellant to work out their remedy for exemption under the ESI Act before the appropriate forum."

5. In the light of the judicial pronouncements that the writ petitions are not maintainable, there is no difficulty to come to the conclusion that the present writ petitions are liable to be dismissed on maintainability grounds.

6.1. On factual situation, even though the learned senior counsel for the petitioner states that the petitioner was allowed to retire on super annuation, withholding the payment of gratuity for which there is no provision, the learned counsel for the respondent Company would submit that the payment of gratuity is subject to the final decision in the disciplinary proceedings. It is made clear that the petitioner is always at liberty to workout his remedy in the manner known to law.

6.2. As far as the subsistence allowance is concerned, as rightly stated in the counter, since the petitioner was under suspension from the year 1995, wage revision, which was given effect to from 1.1.1997, is not applicable to the petitioner and accordingly, there cannot be any revision of subsistence allowance.

In the facts and circumstances of the case, the writ petitions stand dismissed on the ground of maintainability as well as on merit, with the above observation. No costs. Consequently, WMP No.25007 of 1995 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpl

To
Chairman-cum-Managing Director,
HTL Limited, Guindy, Chennai - 2.

1 cc To Mr.S.Ramasubramaniam Associates, Advocate, SR.44489.
1 cc To Mr.S.Srinivasan, Advocate, SR.44673.
1 cc To Mr.M.Sriram, Advocate, SR.44137.

W.P.Nos.16588 of 1998 &
15321 of 2001.

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RVL 01.08.2007

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